

BEFORE THE  
CALIFORNIA BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MARY JANE HEDGES  
359 W. 11<sup>th</sup> Street, Ste. G  
Tracy, CA 95376

Certified Public Accountant No. CPA 78196

Respondent.

Case No. AC-2006-17

OAH No. N2006080456

**DECISION AFTER NONADOPTION**

This matter was heard by Deidre L. Johnson, Administrative Law Judge of the Office of Administrative Hearings, in Sacramento, California, on September 11, 2006.

The California Board of Accountancy, Department of Consumer Affairs, was represented by Leslie A. Burgermyer, Deputy Attorney General, California Attorney General's Office.

Mary Jane Hedges (respondent) was present and represented herself.

Oral and documentary evidence was received. The record was held open until September 18, 2006, for respondent to submit arguments regarding costs. Respondent submitted additional documents and complainant objected. The Administrative Law Judge sustained complainant's objection and the documents were not admitted into evidence.

The record was closed and the matter was submitted for decision on September 25, 2006. The Administrative Law Judge issued a proposed decision on October 25, 2006.

At its regularly noticed meeting held on December 1, 2006, the Board decided not to adopt the proposed decision and instead hear the case based on the existing record. The Board issued an order of nonadoption and requested written arguments from the parties. Written argument having been received from both parties, the entire record, including exhibits and the transcript having been read and considered by the Board pursuant to Government Code Section 11517, the Board hereby makes the following decision and order.

## FACTUAL FINDINGS

1. Carol Sigmann (complainant) brought the Accusation solely in her official capacity as the Executive Officer of the California Board of Accountancy (board), Department of Consumer Affairs, on July 5, 2006. On August 29, 2006, complainant brought an Amended Accusation that was duly served on respondent. Respondent requested a hearing.

2. On October 15, 1999, the board issued Certified Public Accountant No. CPA 78196 (license) to respondent, with an expiration date of April 30, 2001. The license is subject to renewal every two years pursuant to Business and Professions Code section 5070.5.<sup>1</sup> The applicable renewal period for respondent's license begins May 1 of odd-numbered years, and the license was subject to first renewal on May 1, 2001. The board renewed respondent's license on May 1, 2001, for the period through April 30, 2003. Respondent failed to timely renew her license for the period from May 1, 2003, through April 30, 2005. Effective August 19, 2004, the license was renewed through April 30, 2005. Respondent again failed to timely renew the license, and the license was expired and was not valid during the period from May 1, 2005, through December 14, 2005. Respondent's CPA license was expired and was not valid for the period from May 1, 2003 through August 18, 2004, and the period from May 1, 2005 through December 14, 2005, because respondent : (a) failed to pay the renewal fees for each period required by Business and Professions Code section 5070.5 and (b) failed to submit a declaration of compliance with continuing education requirements for each of those renewals. Effective December 15, 2005, the license was renewed, and will expire on May 1, 2007 unless renewed.

### *Practicing as a CPA without a valid CPA license*

3. In July of 2004, during a period of time when respondent's license was expired, as found in Finding 2 above, the board received an anonymous complaint from "John Doe" in Tracy, California, to the effect that respondent was operating with a "delinquent" license, and that she should "stop holding herself out as a CPA or bring her license current." On July 22, 2004, as a result of the complaint, the board sent a letter to respondent requesting: (a) respondent's intentions regarding renewal, and if renewing, to submit a completed application; (b) a complete description of respondent's accountancy practice since May 1, 2003, including the types of services provided, the percentage of time spent on services in the areas of audit, review, compilation, tax, management consulting and other areas; and (c) the reasons for not timely having renewed her license.

4. In a letter to the board dated August 16, 2004, respondent acknowledged receipt of the board's July 2004 inquiry, and responded to the questions. Respondent also enclosed a renewal application, a check for the renewal fee, a continuing education reporting

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<sup>1</sup> Any reference to Respondent's "license" shall also include Respondent's "Certificate" as a certified public accountant issued by the Board.

worksheet claiming 89 hours of continuing education, and corresponding education course certificates. Respondent explained to the board in the letter that 95 percent of her business was "tax preparation" and five percent was "bookkeeping services." Respondent represented that she had not renewed her license earlier because "I didn't think it was urgent since I don't do audits, reviews, compilations or management consulting." Respondent's letter suggested that she did not think she needed a CPA license in order to provide tax preparation services because the seller of the income tax business to her in 2002 had not been a CPA. The board thereafter requested that respondent submit a sample of one individual and one corporate tax return she prepared during the period of license expiration after May 1, 2003. Respondent complied.

5. Respondent's individual tax return sample, submitted to the board on September 30, 2004, shows that on March 15, 2004, respondent prepared a 2003 Internal Revenue Service (IRS) Form 1040 U.S. Individual Tax Return on behalf of her client, Individual Taxpayer A.<sup>2</sup> Respondent's name and business address of record at 359 W. 11<sup>th</sup> Street, Suite G, Tracy, CA 95376, are printed or typed in the designated area on page 2 of the return, for "Paid Preparer's Use Only." On the line after respondent's name, there is no further information.

6. Respondent's corporate tax return sample submitted to the board on September 30, 2004, shows that on September 16, 2003, respondent prepared a 2002 IRS Form 1120 U.S. Corporation Income Tax Return on behalf of her client, Corporate Taxpayer A. Respondent's name and business address of record are printed or typed in the designated area on page 1 for "Paid Preparer's Use Only." On the line after respondent's name, there is no further information.

7. In April 2005, an enforcement analyst with the board sent a letter to respondent asking questions about the tax returns respondent had submitted in September 2004. In July 2005, respondent sent a responsive letter, in which she admitted to the board that between May 1, 2003, and August 18, 2004, she prepared approximately 300 tax returns for clients. However, respondent represented to the board that the returns were signed by her as a "tax preparer," and without a "CPA" designation on the returns. Respondent admitted that she was not an enrolled agent or registered as a tax preparer with the California Tax Education Council (CTEC). Respondent also represented to the board that she did not use the CPA designation on her letterhead, and did not give out business cards with the CPA designation while she was not licensed.

#### *False Information During the Board's Investigation*

8. In February 2006, Tina MacGregor, the board's Investigative CPA visited respondent's office to do a practice investigation, and to review respondent's original files and returns. Ms. MacGregor found the original or original copy of the 2003 IRS return for

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<sup>2</sup> For the hearing before the Administrative Law Judge, the Board redacted the names and identifying information of respondent's clients in all exhibits in order to protect their confidential information.

Individual Taxpayer A. In respondent's file for Individual Taxpayer A, respondent's invoice for professional services rendered has the designation of CPA in the letterhead following respondent's name. On page 2 of the 2003 tax returns, a copy of which had been sent to the board as found in Finding 5 above, there are a few small black marks after respondent's name, suggesting the residue of some printing or writing. On the original document, Ms. MacGregor observed what appeared to be white correction fluid, commonly referred to as "white-out," in the space immediately following respondent's last name. Ms. MacGregor testified that she made another copy of the document to compare it to the copy respondent previously submitted, and the copies looked the same, because the white-out did not show up as a visible substance on the copies. In addition, on IRS Form 8879, for "e-file Signature Authorization," Individual Taxpayer A signed to authorize "Mary Jane Hedges, CPA" to electronically sign and file the return for the individual and his/her spouse. In the bottom portion of Form 8879, respondent signed on March 11, 2004. Respondent's signature on the form identifying her as a CPA constitutes a statement to her client, and to the IRS (if submitted) that she was, in fact, a CPA.

9. Ms. MacGregor examined respondent's file for Individual Taxpayer B. A 2003 IRS Form 1040 tax return was prepared by respondent, signed by the taxpayer on February 21, 2004, and signed by respondent on February 22, 2004. Respondent's invoice in the file, for professional services rendered to Individual Taxpayer B, has the designation of CPA in the letterhead following respondent's name. Respondent's name and her business address of record are printed or typed in the designated area on page 2 of the tax return, for "Paid Preparer's Use Only." On the line after respondent's name, the CPA designation appears. The CPA designation had not been concealed or whited-out, and Individual Taxpayer B's return had not been submitted to the board as a sample. In the bottom portion of a 2003 California e-file Return Authorization, Form 8453, respondent's signature is dated February 22, 2004, directly above her printed name and business address, in which the designation of CPA appears right after her printed name. Respondent's signature on the form identifying her as a CPA constitutes a statement to her client, and to the State of California (if submitted) that she was, in fact, a CPA.

10. On February 10, 2006, after being advised by Ms. MacGregor of the matters found in Findings 8 and 9 above, respondent wrote a letter to Ms. MacGregor and the board admitting that she had lied to the board about her purported non-use of the CPA designation while her license had "lapsed." Respondent stated: "I intentionally whited-out the CPA designation on a copy of a tax return that I sent to the board as evidence that I was not using the CPA designation. And in fact, I was using the CPA designation during that time." Respondent apologized in the letter both for any inconvenience she may caused, and for "any loss in faith in people I have caused you due to my lying."

*Continuing education requirements*

11. Respondent's CPA license expired effective May 1, 2003.<sup>3</sup> Question 3 of respondent's August 2004 late renewal application asked: "Did you complete the required total number of hours of continuing education (CE) during the two years preceding your license expiration date?" Respondent did not answer the question and left the yes and no boxes blank. Respondent attached to the renewal application a continuing education (CE) reporting worksheet, in which she listed seven courses completed that added up to a total of 89 CE hours, with dates of completion from November 2001 through August 12, 2004.

12. Respondent was required to take not less than 80 hours of continuing education prior to the May 1, 2003, license expiration. Only three of the courses, or 24 CE hours, submitted by respondent with her August 2004 late renewal application, predated May 1, 2003. The other four courses were not eligible to be used for the two-year period from May 1, 2001 through April 30, 2003, because respondent took the courses after the license expiration. The board renewed respondent's license by accepting the ineligible courses to meet the minimum 80-hour requirement, but did not waive the right to charge respondent for the violation using courses taken after the expiration date.

13. Respondent's August 2004 renewal was effective through April 30, 2005. When respondent's license expired effective May 1, 2005, respondent again failed to timely renew, and did not sign and submit a renewal application until December 1, 2005. Respondent's December 2005 renewal application contains the same Question 3 as set forth in Finding 11 above. Respondent answered "yes" and attached a continuing education reporting worksheet, in which she listed five courses completed that added up to a total of 81 CE hours, with dates of completion from July 2003 through November 9, 2005.

14. Respondent was required to take not less than 80 hours of continuing education prior to the May 1, 2005, license expiration. Four of the five courses, or 65 CE hours, submitted with respondent's December 2005 late renewal application, predated May 1, 2005. The fifth course was not eligible to be used because it was taken after the license expiration. The board contended that all four courses with appropriate completion dates were nevertheless ineligible for respondent to use to meet her CE requirements for the period from May 1, 2003 through April 30, 2005, because respondent had already used them to qualify for the August 2004 late renewal.<sup>4</sup>

#### *Mitigation, Aggravation, and Rehabilitation evidence*

15. While the board processed respondent's December 2005 renewal, and issued her license as of December 15, 2005, Ms. MacGregor called respondent and informed her that respondent had to take additional CE courses to satisfy the missing qualifying educational requirements, as set forth in Finding 14 above. From December 2005 through

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<sup>3</sup> This finding reflects the Board's license records that respondent's license was valid through and including April 30, 2003. Business and Professions Code section 5070.5 provides that the license or "permit" expires at 12 midnight on the last day of the last month of the second year in any applicable two-year term.

<sup>4</sup> Section 87 of the Code of Regulations, title 16, provides that "No carryover of continuing education is permitted from one two-year license renewal period to another."

February 2006, respondent took eight additional courses, totaling about 88 CE hours, which were accepted by the board. The board did not waive its right to bring disciplinary charges against respondent for the CE violations, but considered the additional courses respondent completed as remedial and mitigation, to be taken into consideration in determining the types of possible violations that could be charged against her.<sup>5</sup>

16. At the time of the evidentiary hearing, respondent had not taken any new CE courses to qualify for the minimum 80 hours of CE required to renew her license on or before April 30, 2007, before it again expires. However, respondent is now current in her CE obligations.

17. It is the practice of the board, for license renewal, to notify licensees in writing 60 to 90 days prior to the expiration of their licenses, and to include a renewal form. Respondent testified that she probably did receive advance notice of her renewal prior to April 30, 2003. For renewals prior to 2004, the board also sent an annual Licensee Handbook containing pertinent information. Since then, the handbook information is available online at the board's website. The board's 2001 and 2003 Licensee Handbooks set forth the same information about qualifying CE courses, and the limited exemptions from CPA certification. The information in both handbooks includes an express advisement that licensees cannot "carryover" CE hours from one renewal period to another. (See California Code of Regulations, tit. 16, §87.) Both handbooks also specifically advised that CPAs, attorneys, and enrolled agents with current active licenses are exempt from the special bonding and continuing education requirements for "tax preparers." As a CPA licensed by the board since 1999, respondent knew or should have known of the CE requirements and the scope of activities allowed to be conducted without an active CPA license.

18. During neither period when respondent's CPA license was expired, from May 1, 2003 through August 18, 2004, or from May 1, 2005 through December 14, 2005, was respondent an enrolled agent, or was she registered as a tax preparer with CTEC. On January 10, 2006, respondent signed an application to become a registered tax preparer with CTEC. Respondent's efforts to qualify as a registered tax preparer were still pending as of the hearing date.

19. Respondent's claims that there have been no complaints to the board against her due to incompetence or fraud in representing a client were not disputed. Respondent testified that she admitted to the board that she had lied, and cooperated with the investigation. While true, the board's investigation continued from July 2004 based on respondent's dishonest letters to the board in August and September 2004, and July 2005, accompanied by one falsified sample of an individual tax return. When respondent was confronted with the board's conclusions in February 2006 that false information had been submitted, she admitted her deceit. Respondent did not voluntarily come forward with the

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<sup>5</sup> As an example, Ms. MacGregor testified that the Board did not charge respondent with providing false information in her renewal application as to CE courses.

truth. There was no evidence to explain why the board waited until February 2006 to examine respondent's records following respondent's correspondence of July 2005.

20. The board did not investigate whether respondent held herself out as a CPA during the second period of expiration from May 1, 2005 through December 14, 2005. Respondent did not testify regarding her business activity during that period, did not volunteer any information, and was not asked about that time period by the board during the hearing.

21. Respondent graduated from San Jose State University in 1989, with a degree in Business with a concentration in Accounting. She went to work for certified public accountancy firms and worked every tax season. As an employee, she was exempt from public accountancy certification requirements. While working for a CPA firm in Walnut Creek, respondent completed 500 auditing hours required for initial licensure.

22. Respondent testified that she thought that if she prepared tax returns while her license was expired, she could sign them as a tax preparer. Respondent testified that she called the California Franchise Tax Board in about 1990, to see if she could sign returns for family and friends, and the answer she received was that she could sign as a "preparer." Whatever information respondent may have given to or received from the Franchise Tax Board over a decade ago fails to explain or mitigate respondent's actions since becoming a licensed CPA. At hearing, respondent admitted that she was aware the seller of the business to her in 2002 was a registered tax preparer with CTEC. When respondent's license expired after April 30, 2003, she did not call the board to find out what her responsibilities were, or whether her purported assumptions about what she could do were accurate. Respondent's explanation that the CPA designation was included in her software program for tax forms is also disingenuous. Respondent conceded that she could have worked with the software company to remove the CPA designation. Respondent admitted in her letter to the board of February 2006, and at hearing, that she used the CPA designation during the time her license was expired from May 1, 2003, through August 18, 2004, and removed the CPA designation when contacted by the board, in one individual tax return she sent to the board.

23. Respondent testified that she went through an extended period of marital difficulties beginning in early 2003, and became severely depressed. Respondent married in 1994 and does not have children. During the separation and divorce, the family home was sold in October of 2004. The divorce was final in January 2006. Respondent has been in treatment with her doctor for depression, and is on medication. Whether respondent's failure to timely meet her statutory obligations to renew her license and to complete mandatory CE courses is characterized as "procrastination" or as the byproduct of depression, it has resulted in dishonest actions, to wit: respondent falsely claimed she did not use the CPA designation in her business during the 2003-2004 expiration, and submitted an altered tax return to the board. Respondent is very remorseful and has apologized. Respondent is a sole proprietor, and her business is her sole source of income. She hopes to continue as a CPA because respondent believes that she is a competent CPA.

24. Respondent did not present any testimony or letters of reference from any family, friends, clients, or business associates on her behalf. Respondent is not active in any community organizations. Respondent does not consider her past history of being behind in continuing education courses to be a problem, because she keeps up with changes in the laws and subscribes to a newsletter, and purchases state and federal tax guides, and is now current with required courses. While acknowledging the wrong she has done to the board, respondent does not consider her violations to be as serious as those of someone who directly harmed a client. Respondent understands that she has given the board reason to question her veracity and to have concern whether respondent poses a risk to the public.

#### *Complainant's Costs*

25. Complainant filed declarations for costs incurred in this case, including investigation costs of \$3,339.15 and an additional \$5,938.50 for legal services provided by the Attorney General's Office, Department of Justice, for a total claimed of \$9,277.65. Respondent objects to the costs and fees submitted by the board and its legal counsel, based on the lack of a detailed accounting, and speculates that she would be unable to repay the costs if her license were revoked. Respondent was responsible for the board's investigation into her misconduct. If respondent had been honest with the board in the summer of 2004, the board would not have had to continue investigating. Nevertheless, the board delayed in its follow up investigation several times until 2006, almost two years later, and the hours billed do not appear reasonably related to the investigation. For example, for the fiscal year 2005-2006, the investigation billed for almost 23 hours. During that time period, respondent wrote one letter to the board in July 2005, the board dealt with her December 2005 renewal and course credits, and the board made one visit to respondent's office to review her records in February 2006 (and presumably wrote a report). Likewise, the legal costs incurred of almost \$6,000, while at reasonable hourly rates, appear to bill for hours in excess of what would seem to be involved for a straightforward accusation, as once amended, and preparation for a one-day hearing with one agency witness.

### **LEGAL CONCLUSIONS**

1. Business and Professions Code<sup>6</sup> section 5050 provides that no person shall engage in the practice of public accountancy in California unless he or she holds a valid "permit" issued by the California Board of Accountancy. Section 5051 of the Code defines public accountancy in part as follows:

Except as provided in Sections 5052 and 5053, a person shall be deemed to be engaged in the practice of public accountancy within the meaning and intent of this chapter if he or she does any of the following:

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<sup>6</sup> All statutory references are to the Business and Professions Code, unless specified otherwise.



(a) Holds himself or herself out to the public in any manner as one skilled in the knowledge, science, and practice of accounting, and as qualified and ready to render professional service therein as a public accountant for compensation.

(b) Maintains an office for the transaction of business as a public accountant;

...

(g) Prepares or signs, as the tax preparer, tax returns for clients.

...

A person is not holding himself or herself out, soliciting, or advertising for clients within the meaning of this section solely by reason of displaying a CPA or PA certificate in his or her office or identifying himself or herself as a CPA or PA on other than signs, advertisements, letterhead, business cards, publications directed to clients or potential clients, or financial or tax documents of a client.

2. Section 5100, subdivisions (g) and (j) of the Code authorizes the board, after notice and hearing, to suspend or revoke any permit or certificate for unprofessional conduct, which may include but is not limited to the following grounds:

...

(g) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter.

...

(j) Knowing preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information.

...

3. Respondent violated section 5050, subdivision (a) of the Code during the period from May 1, 2003 through August 18, 2004, as set forth in Findings 2, 4, 5, 6, 7, 8, 9, 10, 18, 19, and 22, because she engaged in the practice of public accountancy with an expired license or certificate during that time period. Under Section 5051, subdivision (a), she held herself out to the public as a licensed CPA ready to render services, and did render services to approximately 300 clients. Under Section 5051, subdivision (b), respondent maintained an office in Tracy for the transaction of tax preparation services to the public as a public accountant. Under Section 5051, subdivision (g), respondent prepared or signed, as the tax preparer, tax returns for clients when her license was expired, and when she was not exempt from licensure. The CPA designation was found on respondent's invoice letterhead, e-signature authorizations, and tax returns. Cause for disciplinary action exists under section 5050, subdivision (a), in conjunction with section 5051, subdivision (a), (b), and (g).

4. Under the Second Cause of Action in complainant's Amended Accusation, the sole ground for charging respondent with violation of subsection (j) of section 5100 of the Code is that respondent "knowingly prepared false information and submitted it to the Board...." During the board's investigation from July 2004 to about February 10, 2006, as set forth in Findings 4, 5, 7, 8, 9, 10, 19, and 22, respondent knowingly altered one copy of Individual Taxpayer A's tax return previously prepared for the client, and mailed it to the board. In addition, respondent's representations to the board in her letters that she did not use the designation of CPA while her license was expired, and that the altered business record was a sample of her tax returns, constituted false statements to the board. However, section 5100 does not contain any ground for disciplinary action for providing false information to the board during an investigation. While there is no case authority on point, the gist of the prohibitions in Section 5100, subdivision (j) against preparation, dissemination or publication of false, fraudulent, or materially misleading financial statements or information appears to be protection of the public, not the board.<sup>7</sup> Cause for disciplinary action does not exist pursuant to section 5100, subdivision (j).

5. Respondent twice violated section 87 of title 16 of the California Code of Regulations (the Regulations), as follows:

(a) As set forth in Findings 2, 4, 11 and 12, respondent failed to complete at least 80 hours of qualifying continuing education prior to the expiration of her CPA license on May 1, 2003.

(b) As set forth in Findings 2, 13, 14 and 15, respondent failed to complete at least 80 hours of additional continuing education prior to the expiration of her CPA license on May 1, 2005.

6. Cause exists for disciplinary action pursuant to Section 5100, subdivision (g) of the Code, and section 94 of the Regulations, by reason of the violations of section 87 of the Regulations found in Legal Conclusions 5 above. The violations are found because respondent did not timely meet her continuing education requirements prior to each expiration date of her license. Respondent thereafter took many hours of continuing education requirements that technically were ineligible for the 2003 renewal in 2004, and yet could not be counted for the May 2005 renewal either because the board nevertheless accepted them for the 2003 renewal. The board's inconsistent treatment of courses may have contributed to respondent's uncertainty about what courses to submit. In any event, respondent was not charged with submission of incorrect courses in her renewal applications.

7. Respondent violated section 5100, subdivision (g) of the Code, in that respondent willfully violated the accountancy laws of the State of California in Division 3,

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<sup>7</sup> While the evidence did establish that respondent disseminated or published false information to her clients in those tax returns where she used the CPA designation when her license was expired, the Board did not charge respondent with violating subdivision (j) of section 5100 for any other reason than submittal of false information to the Board.

Chapter 1 of the Business and Professions Code, and the regulations promulgated by the board, as set forth in Legal Conclusions 1, 2, and 3 above. The general degree of willfulness under the law is satisfied by evidence that respondent knowingly and voluntarily made decisions and took actions that resulted in the violations of the cited laws and regulations. Cause for disciplinary action under section 5100, subdivision (g) exists.

8. The objective of a disciplinary proceeding is to protect the public, the certificated profession, maintain integrity, high standards, and preserve public confidence in board certification. It is also to impress a professional licensee with the need to maintain the highest ethical and legal standards. There is no significant dispute about what respondent did or failed to do in this case. While respondent was depressed, in the middle of a divorce, and under the treatment of a physician, this conduct cannot excuse willful acts of misconduct and deception. Nor can the severity of the deceit Respondent perpetrated on the board be diminished.

Respondent has presented some evidence in mitigation of her misconduct, as well as some evidence of rehabilitation. (Findings 10, 11, 13, 15, 16, 18, 19, 23, and 24.) Respondent renewed her license, and between December of 2005 and February of 2006, made up over 80 hours of additional CE courses. Despite the fact that respondent knew she was under investigation by the board, from July 2004 to February 2006, respondent continued a course of deception, and again let her license expire for eight more months. Evidence in the record demonstrates that Respondent has not fully grasped the gravity of her offenses. She engaged in deceptive conduct in willful disregard of her legal and ethical obligations as a public accountant. While she has apologized, that apology is patently transparent and designed to "go through the motions." One of the best ways Respondent can learn to appreciate the gravity of her violations is for her ability to practice public accountancy be suspended for an appropriate period of time.

9. *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4<sup>th</sup> 32, sets forth the factors to be considered in determining the reasonableness of costs pursuant to statutory provisions, such as the one applicable here, Business and Professions Code section 5107. The factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's good faith belief in the merits of her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability to pay, and whether the scope of the investigation was appropriate to the alleged misconduct.

Respondent was successful in that one substantive allegation is dismissed, section 5100, subdivision (j). (Legal Conclusion 4.) Respondent did not have a good faith belief about what she could do with an expired license; however, it was not established that her uncertainty about continuing education courses was not in good faith. Respondent did not submit any evidence relating to her financial ability to pay the costs sought, and only speculated that she would be unable to pay them. (Finding 25.) The amount of \$9,277.65, sought by the board appears excessive, given the nature of the charges. The total amount sought does not reflect a scope of investigation appropriate to the misconduct. This was a relatively straightforward investigation that involved some letters and phone calls and

examination of a few isolated tax returns from 2004 through 2005, and one practice visit to respondent's office in 2006, which occurred over an extended period of time, in addition to preparation for a one day hearing with one agency witness. Cause exists pursuant to section 5107, subdivision (a) of the Code, to reduce the board's costs, and to order respondent to reimburse the board in the sum of \$2,000, as its reasonable costs of investigation (reduced from \$3,339.15) and \$4,000 as the reasonable costs attributable to the services of the Department of Justice (reduced from \$5,938.50), for a total of \$6,000. (Finding 25.)

## ORDER

Based upon Legal Conclusion 3, 5(a), 5(b), 6, and 7, jointly and separately, the Accusation against Respondent Mary Jane Hedges is sustained and her Certified Public Accountant License No. CPA 78196 is revoked. However, the revocation of respondent's license is stayed and respondent is placed on probation for a period of three years. During this period of probation, the following terms and conditions will be in effect:

1.     **Suspension:** Certified Public Accountant License No. CPA 78196 issued to Respondent Mary Jane Hedges is suspended for the first one hundred and eighty (180) days of her probation. During this period of suspension, Respondent shall engage in no activities for which certification as a Certified Public Accountant or Public Accountant is required as described in Business and Professions Code, Division 3, Chapter 1, Section 5051.
2.     **Obey All Laws:** Respondent shall obey all federal, California, and other states' and local laws, including those rules relating to the practice of public accountancy in California.
2.     **Cost Reimbursement:** Respondent shall reimburse the board in the total sum of \$6,000 for its investigation and prosecution costs. The payment shall be made in quarterly payments due with quarterly reports, the final payment being due one year before probation is scheduled to terminate.
3.     **Submit Written Reports:** Respondent shall submit, within 10 days of completion of each quarter of the calendar year, written reports to the board on a form obtained from the board. Respondent shall submit under penalty of perjury such other written reports, declarations, and verification of actions as are required. These declarations shall contain statements relative to respondent's compliance with all the terms and conditions of probation. Respondent shall immediately execute all release of information forms as may be required by the board or its representatives.

4. **Personal Appearances:** Respondent shall, during the period of probation, appear in person at interviews/meetings as directed by the board or its designated representatives, provided such notification is accomplished in a timely manner.
5. **Comply with Probation:** Respondent shall fully comply with the terms and conditions of the probation imposed by the board and shall cooperate fully with representatives of the California Board of Accountancy in its monitoring and investigation of respondent's compliance with probation terms and conditions.
6. **Practice Investigation:** Respondent shall be subject to, and shall permit, a practice investigation of her professional practice. Such a practice investigation shall be conducted by representatives of the board, provided notification of such review is accomplished in a timely manner.
7. **Comply with Citations:** Respondent shall comply with all final orders resulting from citations issued by the California Board of Accountancy.
8. **Supervised Practice:** Within thirty days of the effective date of this decision, respondent shall submit to the board or its designee for its prior approval a plan of practice that shall be monitored by another CPA or PA who provides periodic reports to the board or its designee. Respondent shall pay all costs for such monitoring. In its discretion, the board may waive this supervised practice requirement after not less than twelve months from the effective date of this decision.
9. **Ethics Examination:** Respondent shall take and pass with a score of 90 percent or better a board approved ethics examination within three months of the effective date of this decision. If respondent fails to pass said examination within the time period provided, respondent shall so notify the board and shall cease and suspend practice until respondent takes and successfully passes said exam, has submitted proof of same to the board, and has been notified by the board that she may resume practice.

Failure to pass the required ethics examination no later than 180 days prior to the termination of probation shall constitute a violation of probation. Notwithstanding any other provision of this probation, failure to take and pass this examination within five years of the effective date of this order constitutes a separate cause for discipline of respondent's license.

10. **Notification:** In orders that provide for a suspension of practice, including section 9 above, respondent shall comply with procedures provided by the board or its designee regarding notification to, and management of, clients.
11. **Tolling of Probation:** In the event respondent should leave California to reside or practice outside this state, she must notify the board in writing of the dates of departure and return. Periods of non-California residency or practice outside the state shall not apply to reduction of the probationary period. No obligation imposed herein, including requirements to file written reports, or to reimburse the board costs, shall be suspended or otherwise affected by such periods of out-of-state residency or practice except at the written direction of the board.
12. **Active License Status:** Respondent shall at all times maintain an active license status with the board, including during any period of suspension. If the license is expired at the time of the board's decision becomes effective, the license must be renewed within 30 days of the effective date of the decision.
13. **Violation of Probation:** If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and impose such discipline as is deemed warranted, including revocation of respondent's certificate. If an accusation or a petition to revoke probation is filed against respondent during probation, the board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.
14. **Completion of Probation:** Upon successful completion of probation, respondent's certificate will be fully restored.

IT IS SO ORDERED.

This effective date of this decision is April 29, 2007

DATED: March 28, 2007



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DAVID SWARTZ  
President  
California Board of Accountancy

BEFORE THE CALIFORNIA BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the matter of the Accusation  
against:

MARY JANE HEDGES  
359 W. 11<sup>th</sup> Street, Ste. G  
Tracy, CA 95376

Certified Public Accountant  
License No. 78196

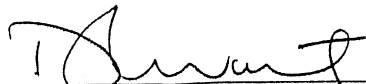
Respondent

Case No.: AC-2006-17  
OAH No.: N2006080456

**ORDER OF NONADOPTION OF PROPOSED DECISION**

Pursuant to Section 11517 of the Government Code, the Proposed Decision of the Administrative Law Judge in the above-entitled matter is not adopted. The California Board of Accountancy will decide the case upon record, including the transcript of the hearing held on September 11, 2006, and upon such written argument as the parties may wish to submit. The Board is particularly interested in written argument directed to the question whether the penalty should be increased. The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

IT IS SO ORDERED this 11th day of December, 2006

  
\_\_\_\_\_  
David L. Swartz  
Board President

BEFORE THE  
CALIFORNIA BOARD OF ACCOUNTANCY  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MARY JANE HEDGES  
359 W. 11th Street, Ste. G  
Tracy, CA 95376

Certified Public Accountant No. CPA 78196

Respondent.

Case No. AC-2006-17

OAH No. N2006080456

**PROPOSED DECISION**

This matter was heard by Deidre L. Johnson, Administrative Law Judge of the Office of Administrative Hearings, in Sacramento, California, on September 11, 2006.

The California Board of Accountancy, Department of Consumer Affairs, was represented by Leslie A. Burgermyer, Deputy Attorney General, California Attorney General's Office.

Mary Jane Hedges (respondent) was present and represented herself.

Oral and documentary evidence was received. The record was held open until September 18, 2006, for respondent to submit argument regarding costs. Respondent's timely letter was marked as Exhibit B. Exhibit B contains attachments which constitute new evidence, including evidence of continuing education courses respondent has enrolled in or taken after the evidentiary hearing adjourned. Respondent's submission of new evidence is deemed a motion to reopen the record. Complainant was given until September 25, 2006 to respond, and its timely response was marked as Exhibit 28. In Exhibit 28, complainant objects to respondent's new evidence and moves to strike the documents. Respondent's new documents are not admitted into evidence because complainant's relevance objection is sustained. The Accusation does not contain any allegations regarding deficiencies or violations pertaining to respondent's present continuing education obligations, and the offered documents regarding courses enrolled in or taken after the evidentiary hearing are irrelevant. The record was closed and the matter was submitted for decision on



September 25, 2006. After the record was closed, complainant submitted a further reply on September 29, 2006, marked as Exhibit 29.<sup>1</sup>

## FACTUAL FINDINGS

1. Carol Sigmann (complainant) brought the Accusation solely in her official capacity as the Executive Officer of the California Board of Accountancy (Board), Department of Consumer Affairs, on July 5, 2006. On August 29, 2006, complainant brought an Amended Accusation that was duly served on respondent. Respondent requested a hearing.

2. On October 15, 1999, the Board issued Certified Public Accountant No. CPA 78196 (license) to respondent, with an expiration date of April 30, 2001. The license is subject to renewal every two years pursuant to Business and Professions Code section 5070.5.<sup>2</sup> The applicable renewal period for respondent's license begins May 1 of odd-numbered years, and the license was subject to first renewal on May 1, 2001. The Board renewed respondent's license on May 1, 2001, for the period through April 30, 2003. Respondent failed to timely renew her license for the period from May 1, 2003, through April 30, 2005. Effective August 19, 2004, the license was renewed through April 30, 2005. Respondent again failed to timely renew the license, and the license was expired and was not valid during the period from May 1, 2005, through December 14, 2005. Respondent's CPA license was expired and was not valid for the period from May 1, 2003 through August 18, 2004, and the period from May 1, 2005 through December 14, 2005, because respondent: (a) failed to pay the renewal fees for each period required by Business and Professions Code section 5070.5 and (b) failed to submit a declaration of compliance with continuing education requirements for each of those renewals. Effective December 15, 2005, the license was renewed, and will expire on May 1, 2007 unless renewed.

### *Practicing as a CPA without a valid CPA license*

3. In July of 2004, during a period of time when respondent's license was expired, as found in Finding 2 above, the Board received an anonymous complaint from "John Doe" in Tracy, California, to the effect that respondent was operating with a "delinquent" license, and that she should "stop holding herself out as a CPA or bring her license current." On July 22, 2004, as a result of the complaint, the Board sent a letter to respondent requesting: (a) respondent's intentions regarding renewal, and if renewing, to submit a completed application; (b) a complete description of respondent's accountancy practice since May 1, 2003, including the types of services provided, the percentage of time

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<sup>1</sup> While complainant's second response was untimely, it does not contain argument regarding the issue of costs, but rather, reports that service of its first response to respondent's address of record failed.

<sup>2</sup> Any reference to Respondent's "license" shall also include Respondent's "Certificate" as a certified public accountant issued by the Board.

spent on services in the areas of audit, review, compilation, tax, management consulting and other areas; and (c) the reasons for not timely having renewed her license.

4. In a letter to the Board dated August 16, 2004, respondent acknowledged receipt of the Board's July 2004 inquiry, and responded to the questions. Respondent also enclosed a renewal application, a check for the renewal fee, a continuing education reporting worksheet claiming 89 hours of continuing education, and corresponding education course certificates. Respondent explained to the Board in the letter that 95 percent of her business was "tax preparation" and five percent was "bookkeeping services." Respondent represented that she had not renewed her license earlier because "I didn't think it was urgent since I don't do audits, reviews, compilations or management consulting." Respondent's letter suggested that she did not think she needed a CPA license in order to provide tax preparation services because the seller of the income tax business to her in 2002 had not been a CPA. The Board thereafter requested that respondent submit a sample of one individual and one corporate tax return she prepared during the period of license expiration after May 1, 2003. Respondent complied.

5. Respondent's individual tax return sample, submitted to the Board on September 30, 2004, shows that on March 15, 2004, respondent prepared a 2003 Internal Revenue Service (IRS) Form 1040 U.S. Individual Tax Return on behalf of her client, Individual Taxpayer A.<sup>3</sup> Respondent's name and business address of record at 359 W. 11th Street, Suite G, Tracy, CA 95376, are printed or typed in the designated area on page 2 of the return, for "Paid Preparer's Use Only." On the line after respondent's name, there is no further information.

6. Respondent's corporate tax return sample, submitted to the Board on September 30, 2004, shows that on September 16, 2003, respondent prepared a 2002 IRS Form 1120 U.S. Corporation Income Tax Return on behalf of her client, Corporate Taxpayer A. Respondent's name and business address of record are printed or typed in the designated area on page 1 for "Paid Preparer's Use Only." On the line after respondent's name, there is no further information.

7. In April 2005, an enforcement analyst with the Board sent a letter to respondent asking questions about the tax returns respondent had submitted in September 2004. In July 2005, respondent sent a responsive letter, in which she admitted to the Board that between May 1, 2003, and August 18, 2004, she prepared approximately 300 tax returns for clients. However, respondent represented to the Board that the returns were signed by her as a "tax preparer," and without a "CPA" designation on the returns. Respondent admitted that she was not an enrolled agent or registered as a tax preparer with the California Tax Education Council (CTEC). Respondent also represented to the Board that she did not use the CPA designation on her letterhead, and did not give out business cards with the CPA designation while she was not licensed.

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<sup>3</sup> For the hearing, the Board redacted the names and identifying information of respondent's clients in all exhibits in order to protect their confidential information.

### *False Information During the Board's Investigation*

8. In February 2006, Tina MacGregor, the Board's Investigative CPA, visited respondent's office to do a practice investigation, and to review respondent's original files and returns. Ms. MacGregor found the original or original copy of the 2003 IRS return for Individual Taxpayer A. In respondent's file for Individual Taxpayer A, respondent's invoice for professional services rendered has the designation of CPA in the letterhead following respondent's name. On page 2 of the 2003 tax return, a copy of which had been sent to the Board as found in Finding 5 above, there are a few small black marks after respondent's name, suggesting the residue of some printing or writing. On the original document, Ms. MacGregor observed what appeared to be white correction fluid, commonly referred to as "white-out," in the space immediately following respondent's last name. Ms. MacGregor testified that she made another copy of the document to compare it to the copy respondent previously submitted, and the copies looked the same, because the white-out did not show up as a visible substance on the copies. In addition, on IRS Form 8879, for "e-file Signature Authorization," Individual Taxpayer A signed to authorize "Mary Jane Hedges, CPA" to electronically sign and file the return for the individual and his/her spouse. In the bottom portion of Form 8879, respondent signed on March 11, 2004. Respondent's signature on the form identifying her as a CPA constitutes a statement to her client, and to the IRS (if submitted) that she was, in fact, a CPA.

9. Ms. MacGregor examined respondent's file for Individual Taxpayer B. A 2003 IRS Form 1040 tax return was prepared by respondent, signed by the taxpayer on February 21, 2004, and signed by respondent on February 22, 2004. Respondent's invoice in the file, for professional services rendered to Individual Taxpayer B, has the designation of CPA in the letterhead following respondent's name. Respondent's name and her business address of record are printed or typed in the designated area on page 2 of the tax return, for "Paid Preparer's Use Only." On the line after respondent's name, the CPA designation appears. The CPA designation had not been concealed or whited-out, and Individual Taxpayer B's return had not been submitted to the Board as a sample. In the bottom portion of a 2003 California e-file Return Authorization, Form 8453, respondent's signature is dated February 22, 2004, directly above her printed name and business address, in which the designation of CPA appears right after her printed name. Respondent's signature on the form identifying her as a CPA constitutes a statement to her client, and to the State of California (if submitted) that she was, in fact, a CPA.

10. On February 10, 2006, after being advised by Ms. MacGregor of the matters found in Findings 8 and 9 above, respondent wrote a letter to Ms. MacGregor and the Board admitting that she had lied to the Board about her purported non-use of the CPA designation while her license had "lapsed." Respondent stated: "I intentionally whited-out the CPA designation on a copy of a tax return that I sent to the board as evidence that I was not using the CPA designation. And in fact, I was using the CPA designation during that time." Respondent apologized in the letter both for any inconvenience she may caused, and for "any loss in faith in people I have caused you due to my lying."

### *Continuing education requirements*

11. Respondent's CPA license expired effective May 1, 2003.<sup>4</sup> Question 3 of respondent's August 2004 late renewal application asked: "Did you complete the required total number of hours of continuing education (CE) during the two years preceding your license expiration date?" Respondent did not answer the question and left the yes and no boxes blank. Respondent attached to the renewal application a continuing education (CE) reporting worksheet, in which she listed seven courses completed that added up to a total of 89 CE hours, with dates of completion from November 2001 through August 12, 2004.

12. Respondent was required to take not less than 80 hours of continuing education prior to the May 1, 2003, license expiration. Only three of the courses, or 24 CE hours, submitted by respondent with her August 2004 late renewal application, predated May 1, 2003. The other four courses were not eligible to be used for the two-year period from May 1, 2001 through April 30, 2003, because respondent took the courses after the license expiration. The Board renewed respondent's license by accepting the ineligible courses to meet the minimum 80-hour requirement, but did not waive the right to charge respondent for the violation of using courses taken after the expiration date.

13. Respondent's August 2004 renewal was effective through April 30, 2005. When respondent's license expired effective May 1, 2005, respondent again failed to timely renew, and did not sign and submit a renewal application until December 1, 2005. Respondent's December 2005 renewal application contains the same Question 3 as set forth in Finding 11 above. Respondent answered "yes," and attached a continuing education reporting worksheet, in which she listed five courses completed that added up to a total of 81 CE hours, with dates of completion from July 2003 through November 9, 2005.

14. Respondent was required to take not less than 80 hours of continuing education prior to the May 1, 2005, license expiration. Four of the five courses, or 65 CE hours, submitted with respondent's December 2005 late renewal application, predated May 1, 2005. The fifth course was not eligible to be used because it was taken after the license expiration. The Board contended that all four courses with appropriate completion dates were nevertheless ineligible for respondent to use to meet her CE requirements for the period from May 1, 2003 through April 30, 2005, because respondent had already used them to qualify for the August 2004 late renewal.<sup>5</sup>

### *Mitigation, Aggravation, and Rehabilitation evidence*

15. While the Board processed respondent's December 2005 renewal, and issued her license as of December 15, 2005, Ms. MacGregor called respondent and informed her

<sup>4</sup> This finding reflects the Board's license records that respondent's license was valid through and including April 30, 2003. Business and Professions Code section 5070.5 provides that the license or "permit" expires at 12 midnight on the last day of the last month of the second year in any applicable two-year term.

<sup>5</sup> Section 87 of the Code of Regulations, title 16, provides that "No carryover of continuing education is permitted from one two-year license renewal period to another."

that respondent had to take additional CE courses to satisfy the missing qualifying educational requirements, as set forth in Finding 14 above. From December 2005 through February 2006, respondent took eight additional courses, totaling about 88 CE hours, which were accepted by the Board. The Board did not waive its right to bring disciplinary charges against respondent for the CE violations, but considered the additional courses respondent completed as remedial and mitigation, to be taken into consideration in determining the types of possible violations that could be charged against her.<sup>6</sup>

16. At the time of the evidentiary hearing, respondent had not taken any new CE courses to qualify for the minimum 80 hours of CE required to renew her license on or before April 30, 2007, before it again expires. However, respondent is now current in her CE obligations.

17. It is the practice of the Board, for license renewal, to notify licensees in writing 60 to 90 days prior to the expiration of their licenses, and to include a renewal form. Respondent testified that she probably did receive advance notice of her renewal prior to April 30, 2003. For renewals prior to 2004, the Board also sent an annual Licensee Handbook containing pertinent information. Since then, the handbook information is available online at the Board's website. The Board's 2001 and 2003 Licensee Handbooks set forth the same information about qualifying CE courses, and the limited exemptions from CPA certification. The information in both handbooks includes an express advisement that licensees cannot "carry over" CE hours from one renewal period to another. (See California Code of Regulations, tit. 16, §87.) Both handbooks also specifically advised that CPAs, attorneys, and enrolled agents with current active licenses are exempt from the special bonding and continuing education requirements for "tax preparers." As a CPA licensed by the Board since 1999, respondent knew or should have known of the CE requirements and the scope of activities allowed to be conducted without an active CPA license.

18. During neither period when respondent's CPA license was expired, from May 1, 2003, through August 18, 2004, or from May 1, 2005 through December 14, 2005, was respondent an enrolled agent, or was she registered as a tax preparer with CTEC. On January 10, 2006, respondent signed an application to become a registered tax preparer with CTEC. Respondent's efforts to qualify as a registered tax preparer were still pending as of the hearing date.

19. Respondent's claims that there have been no complaints to the Board against her due to incompetence or fraud in representing a client were not disputed. Respondent testified that she admitted to the Board that she had lied, and cooperated with the investigation. While true, the Board's investigation continued from July 2004 based on respondent's dishonest letters to the Board in August and September 2004, and July 2005, accompanied by one falsified sample of an individual tax return. When respondent was confronted with the Board's conclusions in February 2006 that false information had been

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<sup>6</sup> As an example, Ms. MacGregor testified that the Board did not charge respondent with providing false information in her renewal application as to CE courses.

submitted, she admitted her deceit. Respondent did not voluntarily come forward with the truth. There was no evidence to explain why the Board waited until February 2006 to examine respondent's records following respondent's correspondence of July 2005.

20. The Board did not investigate whether respondent held herself out as a CPA during the second period of expiration from May 1, 2005 through December 14, 2005. Respondent did not testify regarding her business activity during that period, did not volunteer any information, and was not asked about that time period by the Board during the hearing.

21. Respondent graduated from San Jose State University in 1989, with a degree in Business with a concentration in Accounting. She went to work for certified public accountancy firms and worked every tax season. As an employee, she was exempt from public accountancy certification requirements. While working for a CPA firm in Walnut Creek, respondent completed 500 auditing hours required for initial licensure.

22. Respondent testified that she thought that if she prepared tax returns while her license was expired, she could sign them as a tax preparer. Respondent testified that she called the California Franchise Tax Board in about 1990, to see if she could sign returns for family and friends, and the answer she received was that she could sign as a "preparer." Whatever information respondent may have given to or received from the Franchise Tax Board over a decade ago fails to explain or mitigate respondent's actions since becoming a licensed CPA. At hearing, respondent admitted that she was aware the seller of the business to her in 2002 was a registered tax preparer with CTEC. When respondent's license expired after April 30, 2003, she did not call the Board to find out what her responsibilities were, or whether her purported assumptions about what she could do were accurate. Respondent's explanation that the CPA designation was included in her software program for tax forms is also disingenuous. Respondent conceded that she could have worked with the software company to remove the CPA designation. Respondent admitted in her letter to the Board of February 2006, and at hearing, that she used the CPA designation during the time her license was expired from May 1, 2003, through August 18, 2004, and removed the CPA designation when contacted by the Board, in one individual tax return she sent to the Board.

23. Respondent testified that she went through an extended period of marital difficulties beginning in early 2003, and became severely depressed. Respondent married in 1994, and does not have children. During the separation and divorce, the family home was sold in October of 2004. The divorce was final in January 2006. Respondent has been in treatment with her doctor for depression, and is on medication. Whether respondent's failure to timely meet her statutory obligations to renew her license and to complete mandatory CE courses is characterized as "procrastination" or as the byproduct of depression, it has resulted in dishonest actions, to wit: respondent falsely claimed she did not use the CPA designation in her business during the 2003-2004 expiration, and submitted an altered tax return to the Board. Respondent is very remorseful and has apologized. Respondent is a sole proprietor, and her business is her sole source of income. She hopes to continue as a CPA because respondent believes that she is a competent CPA.

24. Respondent did not present any testimony or letters of reference from any family, friends, clients, or business associates on her behalf. Respondent is not active in any community organizations. Respondent does not consider her past history of being behind in continuing education courses to be a problem, because she keeps up with changes in the laws and subscribes to a newsletter, and purchases state and federal tax guides, and is now current with required courses. While acknowledging the wrong she has done to the Board, respondent does not consider her violations to be as serious as those of someone who directly harmed a client. Respondent understands that she has given the Board reason to question her veracity and to have concern whether respondent poses a risk to the public.

#### *Complainant's Costs*

25. Complainant filed declarations for costs incurred in this case, including investigation costs of \$3,339.15 and an additional \$5,938.50 for legal services provided by the Attorney General's Office, Department of Justice, for a total claimed of \$9,277.65. Respondent objects to the costs and fees submitted by the Board and its legal counsel, based on the lack of a detailed accounting, and speculates that she would be unable to repay the costs if her license were revoked. Respondent was responsible for the Board's investigation into her misconduct. If respondent had been honest with the Board in the summer of 2004, the Board would not have had to continue investigating. Nevertheless, the Board delayed in its follow up investigation several times until 2006, almost two years later, and the hours billed do not appear reasonably related to the investigation. For example, for the fiscal year 2005-2006, the investigation billed for almost 23 hours. During that time period, respondent wrote one letter to the Board in July 2005, the Board dealt with her December 2005 renewal and course credits, and the Board made one visit to respondent's office to review her records in February 2006 (and presumably wrote a report). Likewise, the legal costs incurred of almost \$6,000, while at reasonable hourly rates, appear to bill for hours in excess of what would seem to be involved for a straightforward accusation, as once amended, and preparation for a one-day hearing with one agency witness.

### LEGAL CONCLUSIONS

1. Business and Professions Code<sup>7</sup> section 5050 provides that no person shall engage in the practice of public accountancy in California unless he or she holds a valid "permit" issued by the California Board of Accountancy. Section 5051 of the Code defines public accountancy in part as follows:

Except as provided in Sections 5052 and 5053, a person shall be deemed to be engaged in the practice of public accountancy within the meaning and intent of this chapter if he or she does any of the following:

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<sup>7</sup> All statutory references are to the Business and Professions Code, unless specified otherwise.

(a) Holds himself or herself out to the public in any manner as one skilled in the knowledge, science, and practice of accounting, and as qualified and ready to render professional service therein as a public accountant for compensation.

(b) Maintains an office for the transaction of business as a public accountant;

...

(g) Prepares or signs, as the tax preparer, tax returns for clients.

...

A person is not holding himself or herself out, soliciting or advertising for clients within the meaning of this section solely by reason of displaying a CPA or PA certificate in his or her office or identifying himself or herself as a CPA or PA on other than signs, advertisements, letterhead, business cards, publications directed to clients or potential clients, or financial or tax documents of a client.

2. Section 5100, subdivisions (g) and (j) of the Code authorizes the Board, after notice and hearing, to suspend or revoke any permit or certificate for unprofessional conduct, which may include but is not limited to, the following grounds:

...

(g) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter.

...

(j) Knowing preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information.

...

3. Respondent violated section 5050, subdivision (a) of the Code during the period from May 1, 2003 through August 18, 2004, as set forth in Findings 2, 4, 5, 6, 7, 8, 9, 10, 18, 19, and 22, because she engaged in the practice of public accountancy with an expired license or certificate during that time period. Under Section 5051, subdivision (a), she held herself out to the public as a licensed CPA ready to render services, and did render services to approximately 300 clients. Under Section 5051, subdivision (b), respondent maintained an office in Tracy for the transaction of tax preparation services to the public as a public accountant. Under Section 5051, subdivision (g), respondent prepared or signed, as the tax preparer, tax returns for clients when her license was expired, and when she was not exempt from licensure. The CPA designation was found on respondent's invoice letterhead, e-signature authorizations, and tax returns. Cause for disciplinary action exists under section 5050, subdivision (a), in conjunction with section 5051, subdivisions (a), (b), and (g).



4. Under the Second Cause of Action in complainant's Amended Accusation, the sole ground for charging respondent with violation of subsection (j) of section 5100 of the Code is that respondent "knowingly prepared false information and submitted it to the Board..." During the Board's investigation from July 2004 to about February 10, 2006, as set forth in Findings 4, 5, 7, 8, 9, 10, 19, and 22, respondent knowingly altered one copy of Individual Taxpayer A's tax return previously prepared for the client, and mailed it to the Board. In addition, respondent's representations to the Board in her letters that she did not use the designation of CPA while her license was expired, and that the altered business record was a sample of her tax returns, constituted false statements to the Board. However, section 5100 does not contain any ground for disciplinary action for providing false information to the Board during an investigation. While there is no case authority on point, the gist of the prohibitions in Section 5100, subdivision (j) against preparation, dissemination or publication of false, fraudulent, or materially misleading financial statements or information appears to be protection of the public, not the Board.<sup>8</sup> Cause for disciplinary action does not exist pursuant to section 5100, subdivision (j).

5. Respondent twice violated section 87 of title 16 of the California Code of Regulations (the Regulations), as follows:

(a) As set forth in Findings 2, 4, 11 and 12, respondent failed to complete at least 80 hours of qualifying continuing education prior to the expiration of her CPA license on May 1, 2003.

(b) As set forth in Findings 2, 13, 14, and 15, respondent failed to complete at least 80 hours of additional continuing education prior to the expiration of her CPA license on May 1, 2005.

6. Cause exists for disciplinary action pursuant to Section 5100, subdivision (g) of the Code, and section 94 of the Regulations, by reason of the violations of section 87 of the Regulations found in Legal Conclusions 5 above. The violations are found because respondent did not timely meet her continuing education requirements prior to each expiration date of her license. Respondent thereafter took many hours of continuing education requirements that technically were ineligible for the 2003 renewal in 2004, and yet could not be counted for the May 2005 renewal either because the Board nevertheless accepted them for the 2003 renewal. The Board's inconsistent treatment of courses may have contributed to respondent's uncertainty about what courses to submit. In any event, respondent was not charged with submission of incorrect courses in her renewal applications.

7. Respondent violated section 5100, subdivision (g) of the Code, in that respondent willfully violated the accountancy laws of the State of California in Division 3,

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<sup>8</sup> While the evidence did establish that respondent disseminated or published false information to her clients in those tax returns where she used the CPA designation when her license was expired, the Board did not charge respondent with violating subdivision (j) of section 5100 for any other reason than submittal of false information to the Board.

Chapter 1 of the Business and Professions Code, and the regulations promulgated by the Board, as set forth in Legal Conclusions 1, 2, and 3 above. The general degree of willfulness under the law is satisfied by evidence that respondent knowingly and voluntarily made decisions and took actions, that resulted in the violations of the cited laws and regulations. Cause for disciplinary action under section 5100, subdivision (g) exists.

8. The objective of a disciplinary proceeding is to protect the public, the certificated profession, maintain integrity, high standards, and preserve public confidence in Board certification. There is no significant dispute about what respondent did or failed to do in this case. Respondent was depressed, in the middle of a divorce, and under the treatment of a physician, and failed to function to renew her license and take necessary CE courses in a timely fashion. Respondent appears to have panicked under the pressure of an inquiry from the agency charged with regulating her certified public accountancy status. The issue is what degree of disciplinary action is appropriate for the Board to perform its public protection functions, in light of respondent's failings. Without diminishing the severity of the deceit respondent perpetrated on the Board, to date respondent provides valuable services to many clients with no harm to the public, although the Board's concern for future risk is recognized.

Respondent has presented some evidence in mitigation of her misconduct, as well as some evidence of rehabilitation. (Findings 10, 11, 13, 15, 16, 18, 19, 23, and 24.) Respondent renewed her license, and between December of 2005 and February of 2006, made up over 80 hours of additional CE courses. Despite the fact that respondent knew she was under investigation by the Board, from July 2004 to February 2006, respondent continued a course of deception, and again let her license expire for eight more months. There are no allegations that respondent was incompetent or engaged in fraud with the public. Respondent's divorce is now final; respondent is remorseful and has apologized. While respondent's license should be revoked to reflect the gravity of her violations, it would not be contrary to the public interest to give respondent the opportunity to demonstrate that she has learned a painful lesson, and is able perform her CPA services with adequate attention to Board requirements, provided that she is ordered to meet significant conditions of probation.

9. *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, sets forth the factors to be considered in determining the reasonableness of costs pursuant to statutory provisions, such as the one applicable here, Business and Professions Code section 5107. The factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's good faith belief in the merits of her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability to pay, and whether the scope of the investigation was appropriate to the alleged misconduct.

Respondent was successful in that one substantive allegations is dismissed, section 5100, subdivision (j). (Legal Conclusion 4.) Respondent did not have a good faith belief about what she could do with an expired license; however, it was not established that her uncertainty about continuing education courses was not in good faith. Respondent did not submit any evidence relating to her financial ability to pay the costs sought, and only speculated that she

would be unable to pay them. (Finding 25.) The amount of \$9,277.65, sought by the Board appears excessive, given the nature of the charges. The total amount sought does not reflect a scope of the investigation appropriate to the misconduct. This was a relatively straightforward investigation that involved some letters and phone calls and examination of a few isolated tax returns from 2004 through 2005, and one practice visit to respondent's office in 2006, which occurred over an extended period of time, in addition to preparation for a one day hearing with one agency witness. Cause exists pursuant to section 5107, subdivision (a) of the Code, to reduce the Board's costs, and to order respondent to reimburse the Board in the sum of \$2,000.00, as its reasonable costs of investigation (reduced from \$3,339.15) and \$4,000 as the reasonable costs attributable to the services of the Department of Justice (reduced from \$5,938.50), for a total of \$6,000. (Finding 25.)

### ORDER

Certified Public Accountant License No. CPA 78196 issued to Respondent Mary Jane Hedges is revoked pursuant to Legal Conclusion 3, 5(a), 5(b), 6, and 7, jointly and separately. The revocation of respondent's license is stayed and respondent is placed on probation for a period of three years on the following terms and conditions:

1. **Obey All Laws:** Respondent shall obey all federal, California, and other states' and local laws, including those rules relating to the practice of public accountancy in California.
2. **Cost Reimbursement:** Respondent shall reimburse the Board in the total sum of \$6,000 for its investigation and prosecution costs. The payment shall be made in quarterly payments due with quarterly reports, the final payment being due one year before probation is scheduled to terminate.
3. **Submit Written Reports:** Respondent shall submit, within 10 days of completion of each quarter of the calendar year, written reports to the board on a form obtained from the board. Respondent shall submit under penalty of perjury such other written reports, declarations, and verification of actions as are required. These declarations shall contain statements relative to respondent's compliance with all the terms and conditions of probation. Respondent shall immediately execute all release of information forms as may be required by the board or its representatives.
4. **Personal Appearances:** Respondent shall, during the period of probation, appear in person at interviews/meetings as directed by the board or its designated representatives, provided such notification is accomplished in a timely manner.

5. **Comply with Probation:** Respondent shall fully comply with the terms and conditions of the probation imposed by the board and shall cooperate fully with representatives of the California Board of Accountancy in its monitoring and investigation of respondent's compliance with probation terms and conditions.
6. **Practice Investigation:** Respondent shall be subject to, and shall permit, a practice investigation of her professional practice. Such a practice investigation shall be conducted by representatives of the board, provided notification of such review is accomplished in a timely manner.
7. **Comply with Citations:** Respondent shall comply with all final orders resulting from citations issued by the California Board of Accountancy.
8. **Supervised Practice:** Within thirty days of the effective date of this decision, respondent shall submit to the board or its designee for its prior approval a plan of practice that shall be monitored by another CPA or PA who provides periodic reports to the Board or its designee. Respondent shall pay all costs for such monitoring. In its discretion, the Board may waive this supervised practice requirement after not less than twelve months from the effective date of this decision.
9. **Ethics Examination:** Respondent shall take and pass with a score of 90 percent or better a Board approved ethics examination within three months of the effective date of this decision. If respondent fails to pass said examination within the time period provided, respondent shall so notify the Board and shall cease and suspend practice until respondent takes and successfully passes said exam, has submitted proof of same to the Board, and has been notified by the Board that she may resume practice.

Failure to pass the required ethics examination no later than 180 days prior to the termination of probation shall constitute a violation of probation. Notwithstanding any other provision of this probation, failure to take and pass this examination within five years of the effective date of this order constitutes a separate cause for discipline of respondent's license.

10. **Notification:** In orders that provide for a suspension of practice, including section 9 above, respondent shall comply with procedures provided by the board or its designee regarding notification to, and management of, clients.

11. **Tolling of Probation:** In the event respondent should leave California to reside or practice outside this state, she must notify the board in writing of the dates of departure and return. Periods of non-California residency or practice outside the state shall not apply to reduction of the probationary period. No obligation imposed herein, including requirements to file written reports, or to reimburse the board costs, shall be suspended or otherwise affected by such periods of out-of-state residency or practice except at the written direction of the board.
12. **Active License Status:** Respondent shall at all times maintain an active license status with the Board, including during any period of suspension. If the license is expired at the time the Board's decision becomes effective, the license must be renewed within 30 days of the effective date of the decision.
13. **Violation of Probation:** If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and impose such discipline as is deemed warranted, including revocation of respondent's certificate. If an accusation or a petition to revoke probation is filed against respondent during probation, the board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.
14. **Completion of Probation:** Upon successful completion of probation, respondent's certificate will be fully restored.

DATED: October 25, 2006

  
DEIDRE L. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings

BILL LOCKYER, Attorney General  
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Attorneys for Complainant

**BEFORE THE  
BOARD OF ACCOUNTANCY  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

MARY JANE HEDGES  
359 W. 11th Street, Ste. G  
Tracy, CA 95376

Certified Public Accountant No. CPA 78196

Respondent.

Case No. AC-2006-17

OAH No. 2006080456

**AMENDED  
ACCUSATION**

Complainant alleges:

**PARTIES**

1. Carol Sigmann ("Complainant") brings this Accusation solely in her official capacity as the Executive Officer of the California Board of Accountancy ("the Board").
2. On or about October 15, 1999, the Board of Accountancy issued Certified Public Accountant Number CPA 78196 to Mary Jane Hedges ("Respondent"). The license was not in full force and effect at all times during the times relevant to the charges brought herein against Respondent. The license will expire on May 1, 2007, unless renewed.

**JURISDICTION**

3. This Accusation is brought before the California Board of Accountancy under the following sections of the Business & Professions Code ("Code"):

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///

1 a. Section 5100 provides, in pertinent part:

2 "After notice and hearing, the Board may revoke,  
3 suspend, or refuse to renew any permit or certificate  
4 granted under Article 4 (commencing with Section  
5 5070) and Article 5 (commencing with Section 5080)  
6 or may censure the holder of that permit or certificate  
7 for unprofessional conduct that includes, but is not  
8 limited to, one or any combination of the following  
9 causes:

10 ...

11 "(g) Wilful violation of this chapter or any rule or  
12 regulation promulgated by the board under the authority  
13 granted under this chapter.

14 ...

15 "(j) Knowing preparation, publication, or dissemination  
16 of false, fraudulent, or materially misleading financial  
17 statements, reports, or information."

18 b. Code section 5050 provides, in pertinent part:

19 "(a) No person shall engage in the practice of public  
20 accountancy in this state unless the person is the holder  
21 of a valid permit to practice public accountancy issued  
22 by the board or a holder of a practice privilege pursuant  
23 to Article 5.1 (commencing with Section 5096)."

24 c. Code section 5051 provides, in pertinent part:

25 "Except as provided in Sections 5052 and 5053, a person  
26 shall be deemed to be engaged in the practice of public  
27 accountancy within the meaning and intent of this chapter  
28 if he or she does any of the following:

"(a) Holds himself or herself out to the public in any  
manner as one skilled in the knowledge, science, and  
practice of accounting, and as qualified and ready to render  
professional service therein as a public accountant for  
compensation.

"(b) Maintains an office for the transaction of business as  
a public accountant.

...

"(g) Prepares or signs, as the tax preparer, tax returns for  
clients."

...

"A person is not holding himself or herself out, soliciting,  
or advertising for clients within the meaning of this section  
solely by reason of displaying a CPA or PA certificate in

1 his or her office or identifying himself or herself as a CPA  
2 or PA on other than signs, advertisements, letterhead,  
3 business cards, publications directed to clients or potential  
4 clients, or financial or tax documents of a client."

4 4. This Accusation is also brought before the California Board of  
5 Accountancy under the following sections of Title 16 of the California Code of Regulations:

6 a. Section 87, Basic Requirements, provides, in pertinent part:

7 "(a) 80 Hours. ¶ As a condition of active status license  
8 renewal, a licensee shall complete at least 80 hours of  
9 qualifying continuing education . . . in the two-year  
10 period immediately preceding license expiration, and  
11 meet the reporting requirements specified . . . . A licensee  
12 engaged in the practice of public accounting as defined  
13 in Section 5051 of the [Code] is required to hold a license  
14 in active status. No carryover of continuing education is  
15 permitted from one two-year license renewal period to  
16 another.

13 . . .

14 "(g) Failure to Comply. ¶ A licensee's willful failure to  
15 comply with the requirements of this section shall constitute  
16 cause for disciplinary action pursuant to Section 5100(g) of  
17 the Accountancy Act."

16 b. Section 94, Failure to Comply, provides:

17 "Failure to comply with these continuing education rules  
18 by a licensee engaged in public practice, as defined in  
19 [Code] section 5051, constitutes cause for disciplinary  
20 action under Section 5100."

20 5. Code section 5107 provides for recovery by the Board of all reasonable  
21 costs of investigation and prosecution in a disciplinary action in which the holder of the  
22 certificate is found guilty of unprofessional conduct in violation of, *inter alia*, subdivision (a) of  
23 section 5100.

#### 24 BACKGROUND

25 6. On or about May 1, 2002, the Board, upon Respondent's timely  
26 application, renewed Respondent's Certified Public Accountant Certificate Number CPA 78196  
27 for the period from May 1, 2001, through April 30, 2003, subject to compliance with continuing  
28 education requirements.



1                   7.       On or about May 1, 2003, Respondent's Certified Public Accountant  
2 Certificate Number CPA 78196 expired, and was not renewed until August 19, 2004.

3                   8.       During the period of on or about May 1, 2003, through on or about August  
4 18, 2004 ("relevant period"), Respondent's Certified Public Accountant Certificate Number CPA  
5 78196 was not valid because it had expired, she had not paid the renewal fee required by Code  
6 section 5070.5, and she had not submitted her declaration of compliance with the continuing  
7 education requirements of 80 hours prior to the April 30, 2003, expiration date for her permit.

8                   9.       During the relevant period, Respondent engaged in the practice of public  
9 accountancy within the meaning of Code section 5051, subdivisions (a), (b), and (g), in this State  
10 without holding a valid permit to practice public accountancy or a holder of a practice privilege  
11 in that she prepared individual tax returns which she signed as the preparer and which included  
12 the typed CPA designation after her typed name.

13                  10.       During the relevant period, Respondent knowingly submitted false  
14 information to the Board in that she provided copies of individual tax returns which she signed as  
15 the preparer and included white-out in the space after her typed name where the CPA designation  
16 had been typed in the original returns.

17                  11.       On or about May 1, 2005, Respondent's Certified Public Accountant  
18 Certificate Number CPA 78196 expired, and was not renewed until December 15, 2005.

19                  12.       During the period of on or about May 1, 2005, through on or about  
20 December 15, 2005, Respondent's Certified Public Accountant Certificate Number CPA 78196  
21 was not valid because it had expired, she had not paid the renewal fee required by Code section  
22 5070.5, and she had not submitted her declaration of compliance with the continuing education  
23 requirements of 80 hours prior to the April 30, 2005, expiration date for her permit.

24                               **FIRST CAUSE FOR DISCIPLINE**

25                               **(Practicing Without A Valid Permit)**

26                  13.       Respondent is subject to disciplinary action under Code section 5050,  
27 subdivision (a), in that she practiced accountancy, within the meaning of Code section 5051,

28       ///

1 subdivisions (a), (b), and (g), without a valid permit or certificate as set forth in paragraph 9,  
2 above.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Preparation of False Information)**

5 14. Respondent is subject to disciplinary action under Code section 5100,  
6 subdivisions (g) and (j), in that she knowingly prepared false information and submitted it to the  
7 Board as set forth in paragraph 10, above.

8  
9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Willful Failure to Comply with Basic Requirements  
11 for Continuing Education)**

12 15. Respondent is subject to disciplinary action under Title 16 of the  
13 California Code of Regulations, sections 87 and 94, in that she wilfully failed to comply with the  
14 Board's basic requirements for completing 80 hours of continuing education prior to the April  
15 30, 2003, expiration date for her Certified Public Accountant Certificate Number CPA 78196 as  
16 set forth in paragraph 8, above.

17 16. Respondent is subject to disciplinary action under Title 16 of the  
18 California Code of Regulations, sections 87 and 94, in that she wilfully failed to comply with the  
19 Board's basic requirements for completing 80 hours of continuing education prior to the April  
20 30, 2005, expiration date for her Certified Public Accountant Certificate Number CPA 78196 as  
21 set forth in paragraph 12, above.

22 **PRAYER**

23 WHEREFORE, Complainant requests that the hearing be held on the matters  
24 herein alleged and that following the hearing the California Board of Accountancy issue a  
25 decision:

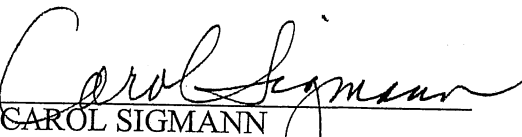
26 1. Revoking, suspending, or otherwise imposing discipline on Certified  
27 Public Accountant Certificate Number CPA 78196, issued to Mary Jane Hedges;

28 ///

1                    2.        Ordering Mary Jane Hedges to pay the California Board of Accountancy  
2 the reasonable costs of investigation and enforcement of this case, pursuant to Business &  
3 Professions Code, section 5107.

4                    3.        Taking such other and further action as the California Board of  
5 Accountancy deems proper.

6  
7 DATED: August 29, 2006  
8

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10   
11 CAROL SIGMANN  
12 Executive Officer  
13 California Board of Accountancy  
14 State of California  
15 Complainant  
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